IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5487 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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RAMESHBHAI MANUBHAI VYAS

Versus

DIRECTOR

Appearance:

1. Special Civil Application No. 5487 of 1998
MRS FALGUNI D PATEL for Petitioner No. 1
MR MA BUKHARI, AGP for Respondent No. 1-2

CORAM : MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 20/06/2002

ORAL JUDGEMENT

1. In this petition under Articles 226 and 227 of the Constitution of India the petitioner has challenged the award passed by the Labour Court, Baroda in Labour Case NO. LCV 199/1986 dated October 10, 1997.

2. According to the petitioner he was discharging duties in the respondent institution since 21st December, 1980. He worked in the institution for 5 years and on 21st August, 1985 he was relieved from the service without there being any fault on his part and without affording to him any opportunity of hearing. He has further averred that though he had completed 240 days in one calendar year, the respondent had failed to comply with the provisions of Section 25 F of the Industrial Disputes Act, 1947 (for short 'the Act'). In these circumstances, he raised a dispute with regard to termination of his service which was ultimately referred to the Labour Court u/S. 10 (1)(c) of the Act. On completion of the proceedings before the Labour Court, it came to the conclusion that the respondent had committed no illegality while relieving the petitioner from service. It has also found that the petitioner had failed to prove that in each year he had worked for 240 days. The Labour Court has further held that the order passed by the respondent giving one month's notice to the petitioner is legal and that there is no reason for granting the prayer of the petitioner regarding reinstatement on original post with full back wages.

3. The petitioner has challenged this award in this petition. Ms. Phalguni Patel, learned counsel for the petitioner has contended that the order terminating the services of the petitioner is bad in law in as much as no opportunity has been afforded to the petitioner before terminating his services by the respondent. In other words, according to her, the respondent has failed to comply with the principles of natural justice. She has further contended that though the petitioner has rendered service for 240 days in a calendar year, the respondent has failed to comply with the provisions of section 25-F of the Act and, therefore, also the petitioner is entitled to be reinstated in service. She has lastly contended that the allegations levelled against the petitioner are all false and they have been cooked up solely with a view to terminate his services.

4. On going through the record of this petition it appears that the behaviour of the petitioner while on duty was not at all good. In fact the judgment of the Labour Court shows that on number of occasions he used filthy language even when the lady workers were present at the site of work. It also appears from the judgment that he tried to create disharmony amongst the co-workers and he even spread the rumors to the effect that the water meant for drinking was contaminated with poison. Apart from this, the Labour Court has found from the

documentary evidence produced by both the sides that the petitioner was very irregular and he had not worked for more than 180 days in a calendar year. It has also been found by the Labour Court that the respondent was called upon to reduce the working staff in pursuance of the circular issued by the Government dated 14th June, 1983. In accordance with the said circular respondent was required to relieve about 115 daily wagers working with it. For that purpose the respondent institution had prepared a seniority list of the persons who were required to be retained in service. Since the petitioner's name did not appear in that list, alongwith 114 daily wagers, he was also relieved from service. The Labour Court has further come to the conclusion that due procedure has been followed by the respondent institution by giving one month's notice to the petitioner before terminating his services.

5. I have carefully gone through the entire record of this petition. The conclusions reached by the Labour Court are also reconsidered by me carefully. It clearly appears from the record that the petitioner was a head strong person and he behaved in a fashion which did not befit a person working in the institution like the respondent. Not only that but it also appears that there is no merit in the contention raised by Ms. Patel to the effect that the petitioner had completed 240 days in service in a calendar year and, therefore, provisions of section 25-F of the Act were required to be followed. The evidence shows that to some extent it has been admitted by the petitioner himself that he was very irregular in attending the service and off and on he remained absent. The evidence further shows that he has not worked for more than 180 days in a year all throughout the span of his service. In view thereof, the respondent was not required to follow the provisions of the aforesaid section. It may also be stated here that before terminating the services of the petitioner the respondent institution has served him with a notice of one month. The same has been produced on record of this petition. Though the said notice is not very happily worded, it does give indication to the effect that the respondent institution has made clear its intention to terminate the service of the petitioner at the end of one month. Since the petitioner was a daily wager, no other procedure was required to be followed before relieving him from the service. I, therefore, do not find any illegality committed by the Labour Court while dismissing the reference of the petitioner. At this juncture Ms. Patel makes a statement that even after a lapse of 17 years the petitioner has not been able to get a stable

job and he has been earning his livelihood by doing miscellaneous work. It is, therefore, hoped that as and when the petitioner approaches the respondent-institution with a request for work, the same may be considered by the respondent - institution sympathetically.

This petition, therefore, does not have any merit and it deserves to be dismissed. The petition is, therefore, dismissed. Rule is discharged with no order as to costs.

[Akshay H. Mehta, J.]

* Pansala.